

ASSEMBLY, No. 5730

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 17, 2021

Sponsored by:

Assemblyman ROBERT J. KARABINCHAK

District 18 (Middlesex)

SYNOPSIS

Establishes State purchasing preference for pervious pavement material; provides CBT tax credit to certain taxpayers that purchase pervious pavement material for municipal, county, or State construction or improvement projects.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the purchase and use of pervious pavement
2 material and supplementing Titles 52 and 54 of the Revised
3 Statutes.

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5 BE IT ENACTED by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. a. (1) Notwithstanding the provisions of any law, rule or
9 regulation to the contrary, the Director of the Division of Purchase
10 and Property and the Director of the Division of Property
11 Management and Construction in the Department of the Treasury,
12 and any State agency having authority to contract for the purchase
13 of goods or services, shall, when entering into a contract for the
14 purchase of asphalt or concrete for any municipal, county, or State
15 project that requires the use of asphalt or concrete, apply a pervious
16 pavement material discount to the price of bids for the purpose of
17 bid assessment and selection.

18 (2) The pervious pavement material discount rate applied
19 pursuant to this subsection shall be established by the State
20 Treasurer, in consultation with the Department of Environmental
21 Protection.

22 (3) The specific price discount rates to be applied to bids for
23 each pervious pavement material shall be based on the material's
24 placement within the Department of Environmental Protection's
25 stormwater management hierarchy.

26 (4) A pervious pavement material discount provided under this
27 subsection shall not exceed five percent of the total bid price.

28 (5) The State Treasurer, in consultation with the Department of
29 Environmental Protection, shall adopt, pursuant to the
30 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
31 seq.), rules and regulations necessary to implement the price
32 discount rate established pursuant to this section. The rules and
33 regulations shall include, but need not be limited to:

34 (a) a uniform process for contractors to certify both that the
35 asphalt or concrete selected for any municipal, county, or State
36 construction or improvement project is a pervious pavement
37 material that will provide environmental benefits, such as
38 stormwater management, to the surrounding area, and that the
39 material is included in the stormwater management hierarchy
40 established pursuant to subsection b. of this section;

41 (b) guidelines to assist State agencies in determining which
42 contracts are subject to the requirements of this section, and the
43 rules and regulations adopted pursuant thereto;

44 (c) guidelines for training contracting personnel to implement
45 the requirements of this section;

46 (d) a mechanism for monitoring contractor compliance with the
47 requirements of this section; and

1 (e) penalties to be applied when a contractor fails to comply
2 with the provisions of this subsection or the rules and regulations
3 adopted pursuant thereto.

4 (6) Whenever any agency or department of State government
5 purchases asphalt or concrete, or undertakes any municipal, county,
6 or State construction or improvement project that requires the use of
7 asphalt or concrete, the agency or department shall follow the rules,
8 regulations, and guidelines therefor, which have been established
9 pursuant to this subsection.

10 b. The Department of Environmental Protection shall establish
11 a stormwater management hierarchy to comparatively rank different
12 pervious paving materials on their ability to do the following:

13 (1) reduce stormwater runoff; and

14 (2) filter out contaminants and improve water quality.

15 c. For State-funded construction projects that will be
16 completed by a private contracting firm that has been contracted by
17 the State, and for which asphalt or concrete will be procured by the
18 contractor for the project, the contractor shall comply with the
19 selection standards and rules established pursuant to this section
20 when subcontracting products or services from asphalt or concrete
21 providers. The State Treasurer shall establish policies and
22 procedures for private contracting firms to comply with the
23 requirements of this section.

24 d. In preparing the specifications for any contract for the
25 purchase of asphalt or concrete for any municipal, county, or State
26 construction or improvement project that requires the use of asphalt
27 or concrete, the Director of the Division of Purchase and Property,
28 the Director of the Division of Property Management and
29 Construction, and any State agency having authority to contract for
30 the purchase of goods or services shall include in the invitation to
31 bid, where relevant, a statement that provides for any response to
32 the invitation, which proposes or calls for the use of pervious
33 pavement material, to receive the price discount rate established
34 pursuant to subsection a. of this section.

35 e. The provisions of this section shall not apply to:

36 (1) any binding contractual obligations for the purchase of
37 goods or services entered into prior to the effective date of P.L. ,

38 c. (C.)(pending before the Legislature as this bill);

39 (2) bid packages advertised and made available to the public, or
40 to any competitive and sealed bids received by the State, prior to
41 the effective date of P.L. , c. (C.)(pending before the
42 Legislature as this bill); or

43 (3) any amendment, modification, or renewal of a contract
44 entered into prior to the effective date of P.L. ,

45 c. (C.)(pending before the Legislature as this bill) where the
46 application would delay timely completion of a project or involve
47 an increase in the total moneys to be paid by the State under that
48 contract.

1 f. No later than two years after the effective date of P.L. ,
2 c. (C.) (pending before the Legislature as this bill), the State
3 Treasurer, in consultation with the Department of Environmental
4 Protection, shall prepare and submit a report to the Governor and,
5 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the
6 Legislature, which shall include a cost-benefit analysis of the
7 pervious pavement material procurement preference established
8 pursuant to this section, in order to quantify the budgetary impact of
9 the program relative to the preference's stormwater management
10 impact. The report shall recommend whether the preference should
11 be continued, modified, or repealed, and include any
12 recommendations for legislative or regulatory action to improve the
13 preference.

14 g. For the purposes of this section:

15 "Pervious pavement material" means an asphalt or concrete
16 product that, when utilized, allows rainwater to penetrate the
17 pavement and percolate into the supporting soils. "Pervious
18 pavement material" includes, but is not limited to, pervious
19 concrete, also referred to as porous concrete or permeable concrete;
20 pervious asphalt, also referred to as porous asphalt or permeable
21 asphalt; and permeable interlocking pavers.

22 "Stormwater management hierarchy" means a ranking system
23 that evaluates and compares the ability of various pervious
24 pavement materials to reduce stormwater runoff, filter out
25 contaminants, and improve water quality, and which is established
26 by the Department of Environmental Protection pursuant to
27 subsection b. of this section.

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29 2. a. (1) A taxpayer, who in a privilege period, purchases
30 pervious paving material for a municipal, county, or State
31 construction or improvement project that requires the use of asphalt
32 or concrete, shall be allowed a credit against the tax imposed
33 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), to be
34 calculated as provided in paragraph (2) of this subsection, to
35 compensate the taxpayer for costs incurred as a result of utilizing
36 pervious pavement material instead of asphalt or concrete that is
37 impervious.

38 (2) The amount of the credit authorized pursuant to this section
39 shall not exceed the lesser of: (a) the full cost incurred for utilizing
40 pervious paving material, or (b) \$3,000. A taxpayer may claim the
41 credit authorized pursuant to this section for the cost of utilizing
42 pervious pavement material instead of asphalt or concrete that is
43 impervious for up to eight different construction or improvement
44 projects during a single privilege period.

45 b. The order of priority of the application of the tax credit
46 allowed pursuant to this section, and any other credits allowed
47 against the tax imposed pursuant to section 5 of P.L.1945, c.162
48 (C.54:10A-5) for a privilege period, shall be as prescribed by the

1 director. The amount of the credit applied pursuant to this section
2 against the tax imposed pursuant to section 5 of P.L.1945, c.162
3 (C.54:10A-5) shall not reduce a taxpayer's tax liability to an amount
4 less than the statutory minimum provided in subsection (e) of
5 section 5 of P.L.1945, c.162 (C.54:10A-5). The amount of the tax
6 credit otherwise allowable under this section which cannot be
7 applied for the privilege period due to the limitations of this
8 subsection or other provisions of P.L.1945, c.162 (C.54:10A-1 et
9 seq.) may be carried forward, if necessary, to the seven privilege
10 periods following the privilege period for which the tax credit was
11 allowed.

12 c. The director, in consultation with the Department of
13 Environmental Protection, shall adopt, pursuant to the
14 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
15 seq.), rules and regulations as are necessary to implement the
16 provisions of this section. The director may require the submission
17 of any information the director deems necessary to award a tax
18 credit pursuant to this section.

19 d. For the purposes of this section, "pervious pavement
20 material" means an asphalt or concrete product that, when utilized,
21 allows rainwater to penetrate the pavement and percolate into the
22 supporting soils. "Pervious pavement material" includes, but is not
23 limited to, pervious concrete, also referred to as porous concrete or
24 permeable concrete; pervious asphalt, also referred to as porous
25 asphalt or permeable asphalt; and permeable interlocking pavers.

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27 3. This act shall take effect immediately.

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STATEMENT

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32 The bill would establish a State purchasing preference for
33 pervious pavement material and provide a corporation business tax
34 credit to taxpayers who purchase pervious paving material for a
35 municipal, county, or State construction or improvement project
36 within a privilege period. As used in the bill, "pervious pavement
37 material" means an asphalt or concrete product that, when utilized,
38 allows rainwater to penetrate the pavement and percolate into the
39 supporting soils. The term expressly includes, but is not limited to,
40 pervious concrete, also referred to as porous concrete or permeable
41 concrete; pervious asphalt, also referred to as porous asphalt or
42 permeable asphalt; and permeable interlocking pavers.
43 "Stormwater management hierarchy" means a ranking system that
44 evaluates and compares the ability of various pervious pavement
45 materials to reduce stormwater runoff, filter out contaminants, and
46 improve water quality, and which is established by the Department
47 of Environmental Protection (DEP) pursuant to the bill.

1 Specifically, the bill would require the Director of the Division
2 of Purchase and Property and the Director of the Division of
3 Property Management and Construction in the Department of the
4 Treasury, and any State agency having authority to contract for the
5 purchase of goods or services, when entering into a contract for the
6 purchase of asphalt or concrete for any municipal, county, or State
7 project that requires the use of asphalt or concrete, to apply a
8 pervious pavement material discount to the price of bids for the
9 purpose of bid assessment and selection. The pervious pavement
10 material discount rate would be established by the State Treasurer,
11 in consultation with the DEP, and would be applied to bid prices
12 based on each pervious pavement material's placement on the
13 DEP's stormwater management hierarchy. The pervious pavement
14 material discount provided under the bill may not exceed five
15 percent of the total bid price.

16 For State-funded construction projects to be completed by a
17 private contracting firm that has been contracted by the State, and
18 for which asphalt or concrete will be procured by the contractor for
19 the project, the contractor will be required to comply with the
20 selection standards and rules established pursuant to the bill when
21 subcontracting products or services from asphalt or concrete
22 providers. The State Treasurer will be required to establish policies
23 and procedures to assist private contracting firms in complying with
24 the bill's requirements.

25 In preparing the specifications for any contract for the purchase
26 of asphalt or concrete for any municipal, county, or State
27 construction or improvement project that requires the use of asphalt
28 or concrete, a State entity will be required to include in the
29 invitation to bid, where relevant, a statement providing for any
30 response to the invitation that proposes or calls for the use of
31 pervious pavement to receive the price discount rate established in
32 the bill. The State purchasing preference would not apply to certain
33 contracts as specified in the bill.

34 No later than two years after the bill's effective date, the State
35 Treasurer, in consultation with the DEP, will be required to prepare
36 and submit a report to the Governor and the Legislature. The report
37 is to: (1) include a cost-benefit analysis of the pervious pavement
38 material procurement preference established in the bill, in order to
39 quantify the budgetary impact of the program relative to the
40 preference's stormwater management impact; (2) indicate whether
41 the preference should be continued, modified, or repealed; and (3)
42 include any recommendations for legislative or regulatory action to
43 improve the preference.

44 The bill would also provide a tax credit against the corporation
45 business tax to compensate a taxpayer who purchases pervious
46 pavement material for a municipal, county, or State construction or
47 improvement project that requires the use of asphalt or concrete.
48 The amount of the tax credit may not exceed the lesser of: (1) the

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1 full cost incurred for utilizing pervious pavement material instead
2 of impervious asphalt or concrete; or (2) \$3,000. A taxpayer may
3 claim the credit authorized under the bill for up to eight different
4 construction or improvement projects during a single privilege
5 period.
6 This bill is necessary to incentivize the use of pervious pavement
7 material for municipal, county, or State construction or
8 improvement projects. Utilizing pervious pavement material for
9 construction or improvement projects, such as parking lots,
10 sidewalks, or roads, can result in environmental benefits, including
11 improved stormwater management, by significantly reducing runoff
12 and improving water quality.